

PBT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FORM FOR USE IN APPLICATIONS FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254

(eff. 12/1/04)

FILED

BLANE NEELY

PETITIONER

(Full Name) (Include name under which you were convicted)

07 - 0103

By

vs.

Case No. GP-46-575-2006

(Supplied by the Court)

DAVID DIGUGLIELIMO, et al.

RESPONDENT

(Name of Warden, Superintendent, Jailor, or authorized person having custody of petitioner)

and

THE DISTRICT ATTORNEY OF THE COUNTY OF MONTGOMERY, PA/

and

THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

ADDITIONAL RESPONDENT

BLANE NEELY

GE-0655

Name

Prison Number

STATE CORRECTIONAL INSTITUTION - AT - GRATERFORD PENNSYLVANIA¹
Place of Confinement

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

INSTRUCTIONS-READ CAREFULLY

1. You must include all potential claims and supporting facts for which you might desire to seek review because a second or successive habeas corpus petition cannot be filed except under very specific and rare circumstances requiring certification by the Third Circuit Court of Appeals as set forth in instruction # 13.

2. Your habeas corpus petition must be filed within the 1-year statute of limitations time limit set forth in 28 U.S.C. § 2244(d)(1). (There are limited circumstances in which the petition may be amended, within the one-year time period, to add additional claims or facts, see Federal Rules of

1. Footnote:

The Petitioner Blane Neely, a/k/a James Jones SBI # 416474 is currently housed at the Howard R. Young Correctional Institution at 1301 E. 12th Street, Wilmington, Delaware 19809

Civil Procedure 15; or amended after the one-year period expires, in order to clarify or amplify claims which were timely presented, see United States v. Thomas, 221 F. 3d 430 (3d Cir.2000.)

3. Any false statement of a material fact in your petition, in a motion for leave to proceed in forma pauperis, or in any other motion you file in this case may serve as the basis for prosecution and conviction for perjury.

4. This petition must be typewritten, printed, or legibly handwritten and signed by you as the petitioner or by your representative on Page 11. You should answer all questions concisely in the proper space of the petition. If you need more room to answer any question, you may write on the reverse blank sides of the petition.

5. You may not attach additional pages to the petition. You do not have to list or cite the cases or law that you are relying on. If you do want to cite the cases and law you are relying on and make legal arguments, you should do so in a separate concise brief or memorandum which should be filed along with the petition.

6. When you file your petition, you must include a filing fee of \$5.00. If you cannot pay the full filing fee, you must request permission to proceed in forma pauperis as explained in instruction # 8.

7. Your petition will be filed if you have followed these instructions and it is in proper order.

8. To request permission to proceed in forma pauperis without paying the full filing fee, you must completely fill out pages 12 through 18 of the petition. You should answer all questions and sign where indicated on Pages 12 and 18. You should see to it that an authorized prison official completes the certification on Page 19. You must prove that you cannot pay the full filing fee and other costs because of poverty and a discharge in bankruptcy will not excuse you from this requirement. The Court will let you know if you may proceed in forma pauperis.

9. Only final judgments entered by one state court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.

10. As required by 28 U.S.C. § 2254(b)(1), you must have exhausted all claims that you are making in your petition. This means that every claim must have been presented to each level of the state courts. If you file a petition that contains claims that are not exhausted, the federal court will dismiss your petition. 28 U.S.C. § 2254(b)(2) provides that if it is perfectly clear that no colorable claims are presented, the federal court can also deny your petition on the merits.

11. As required by 28 U.S.C. § 2254(e)(1), a federal court, when considering your habeas corpus petition, must deem as correct a determination of fact made by a state court unless you rebut the presumption of correctness by clear and convincing evidence. Under 28 U.S.C. § 2254(e)(2), if

you have failed to develop the factual basis of a claim in state court proceedings, a federal court cannot hold an evidentiary hearing on that claim unless you show that:

(i) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the U.S. Supreme Court, that was previously unavailable, or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence.

You must also show that the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found you guilty of the offense in question.

12. As required by 28 U.S.C. § 2244(b)(1), a federal court must dismiss any claim in a second or successive habeas corpus petition that *was* presented in a prior habeas corpus petition.

13. As required by 28 U.S.C. § 2244(b)(2), a federal court must dismiss any claim in a second or successive habeas corpus petition that *was not* presented in a prior habeas corpus petition unless you show:

(A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the U.S. Supreme Court, that was previously unavailable;

or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence, and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found you guilty of the offense in question.

Before such a second or successive petition may be filed in the district court, however, the petitioner must move the court of appeals for an Order authorizing the district court to consider the petition. Petitioner's motion for such an Order must be determined by a three judge panel of the court of appeals, which must **grant** or deny the motion within 30 days. The court of appeals may grant the motion only if it determines that the petition makes a prima facie showing that it satisfies either (A) or (B) above.

14. 28 U.S.C. § 2254(i) provides that ineffectiveness of counsel during post-conviction, habeas corpus and P.C.R.A. proceedings in state or federal court may not be grounds for relief in your petition.

15. When the petition is fully completed, the **original and four copies** must be mailed to the Clerk of the United States District Court, Room 2609, 601 Market Street, Philadelphia, PA 19106. You must return all pages, including these instructions.

PETITION

1. (a) Name and location of court which entered the judgment of conviction under attack: _____

THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY PENNSYLVANIA

(b) Name of Prosecutor: **KAREN RICCA, ESQ., ASSISTANT DISTRICT ATTORNEY**

(c) Prosecution conducted by District Attorney's Office of **MONTGOMERY**
County

2. (a) Date of Judgment of conviction: **EXTRADITION ORDERED JUNE 15, 2006**

(b) Indictment number or numbers: **STATE OF DELAWARE V. BLANE NEELY AKA
JAMES JONES,**

INDICTMENT NO. 9908003661

Term: _____ Criminal Case Number **CP-46-MD-575-2006**

3. Length of sentence: **EXTRADITED** Sentencing Judge: **WILLIAM R. CARPENTER**

4. Nature of offense or offenses for which you were convicted: **STATE OF DELAWARE GIVEN**

TEMPORARY CUSTODY UNDER THE INTERSTATE AGREEMENT ON DETAINER

ACT.

5. What was your plea? (Check one)

(a) Not guilty () (b) Guilty () (c) Nolo contendere () **(CONTESTED EXTRADITION.)**

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

6. If you pleaded not guilty, what kind of trial?: (Check one) (a) Jury () (b) Judge only ()

7. Did you testify at the trial? Yes () No ()

(EXTRADITION)

8. Did you appeal from the judgment of conviction? **XXXXXXXX** Yes (X) No ()

9. If you did appeal, answer the following:

(a) Name of court: SUPERIOR COURT OF PENNSYLVANIA

(b) Result: PETITIONER WAS ILLEGALLY EXTRADITED BEFORE
THE JUDGMENT TO EXTRADITE PETITIONER WAS
ADJUDICATED BY THE SUPERIOR COURT OF PA.

(c) Date of result and citation, if known: _____

(d) Grounds raised: STATE OF DELAWARE VIOLATED THE INTERSTATE

AGREEMENT ON DETAINERS ACT, ARTICLE IV, V

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court: _____

(2) Result: _____

(3) Date of result and citation, if known: _____

(4) Grounds raised: _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court: _____

(2) Result: _____

(3) Date of result and citation, if known: _____

(4) Grounds raised: _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes () No ()

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of Court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes () No ()

(5) Result: _____

(6) Date of result: _____

(7) Did you appeal the result to a higher court? Yes () No ()

Court Name(s) _____

Result(s) _____

Result Date(s) _____

(b) As to any second petition, application or motion give the same information:

(1) Name of Court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes () No ()

(5) Result: _____

(6) Date of result: _____

(7) Did you appeal the result to a higher court? Yes () No ()

Court Name(s) _____

Result(s) _____

Result Date(s) _____

(c) As to any third petition, application or motion give the same information:

(1) Name of Court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes () No ()

(5) Result: _____

(6) Date of result: _____

(7) Did you appeal the result to a higher court? Yes () No ()

Court Name(s) _____

Result(s) _____

Result Date(s) _____

(d) If you did **not** appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Give specific facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, ***you should raise in this petition all available grounds*** (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, (where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim).
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, (where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim).
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: _____

Supporting FACTS (state *briefly* without citing cases or law):

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law):

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law):

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes () No (☒)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(EXTRADITION HEARING)

(a) At preliminary hearing: MR. JEROME M. BROWN, ESQUIRE

1628 J.F.K. BLVD., SUITE 1000, PHILADELPHIA, PA. 19103

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes () No ()

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes () No ()

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes () No ()

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 3, 2007
Date

Blane Feely
Petitioner's Signature or
Signature of Petitioner's Representative

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

PBT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLANE NEELY,
PETITIONER

: CIVIL ACTION

VS.

DAVID DIGUGLIELMO SUPT., et al
RESPONDENTS

: NO.

FILED

JAN - 2 2007

07 - 0103

Dep. Clerk

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254

TO: THE HONORABLE JUDGES/JUDGES OF THE ABOVE-SAID COURT:

The Petitioner, Blane Neely, Pro-se, that Writ of Habeas Corpus be granted for the reasons that follows:

1. Petitioner is an inmate currently housed at the State Correctional Institution, Graterford, in Graterford, Pennsylvania.

2. The State of Delaware has sought to remove Petitioner pursuant to the Interstate Agreement on Detainers (IAD) in the matter of State of Delaware V. James Jones, Indictment No. 9908003661, which involves an incident that occurred on or about August 4, 1999. (See enclosed record attached hereto.)

3. The Docket Entries of The Superior Court of Delaware records reflect that subsequent to release on bond, the Petitioner was incarcerated at Graterford Prison which the State of Delaware became aware of on March 8, 2000. See: Exhibit "A" attached, Docket Entry #18.

4. As a result of being notified that Petitioner was now incarcerated in Pennsylvania at SCI-Graterford, the State of Delaware on June 2, 2000 filed a "Form 5" Request for

Temporary Custody. See: Exhibit "A", attached, Docket Entry #24.

5. The State of Delaware after making the Form 5 written Request For Temporary custody on June 2, 2000 triggering obligations and protections under IAD and pursuant to Article IV and V of that act, the State of Delaware did not proceed; fail to accept temporary custody and to try Petitioner in 120 days.

6. The State of Delaware made a second Form 5 Request For Temporary Custody on February 8, 2005 which was signed by a judge in Delaware but that said request was not mailed to the District Attorney's Office in Pennsylvania until October 26, 2005, over eight months later; again the State of Delaware did not proceed; failed to accept Temporary Custody and to try Petitioner in 120 days after triggering State of Delaware's obligations and Petitioners protections under IAD. See: Exhibit "B", State of Delaware "Second Form 5" Request for Temporary Custody.

7. The State of Delaware has violated the Interstate Agreement on Detainers Act, Article IV and V(c), where State of Delaware failed to commence extradition proceedings and failed to accept temporary custody after filing "Form 5" initiating transfer...the 120 day period of Article IV, is triggered...Upon presentation of a written request for temporary custody or availability and was sufficient to trigger the State of Delaware's obligation pursuant to Article IV of the IAD to bring

Appellant to trial in a 120 days. See: Commonwealth v. Davis, 567 Pa. 135, 138-39, 786 A.2d 173, 175 (2001); Article IV of the IAD provides the procedure by which the prosecutor in the requesting State initiates the transfer:

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated.

8. Pursuant to INTERSTATE Agreement on Detainer Act. Article V(c), "If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate Court of jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect."

9. The State of Delaware again further violated the IAD by presenting the February 8th 2005 "second" Form 5 Request for Temporary Custody, as requisition papers at Petitioner's Extradition Hearings on June 5th 2006 before Judge Thomas Del

Ricci and June 13th before Judge William R. Carpenter, in the Court of Common Pleas of Montgomery County, Courtroom 6, which made the requisition untimely and invalid, Requisition Papers was not in the proper order. See: Exhibit "B" attached, State of Delaware Second Requisition Papers which were presented as Third Requisition.

10. See: Commonwealth v. Mayle, 788 A.2d 677 (Pa. Super. 2001), the court cited the following language from Commonwealth v. Thornhill, 441 Pa. Super. 382, 601 A.2d 842, 846 (Pa. Super. 1992) to set forth the policies under the act:

"The policy of the Interstate Agreement on Detainers is to encourage the expeditious and orderly disposition of charges and its purpose is to promote and foster prisoner treatment and rehabilitation programs by eliminating uncertainties which accompany the filing of detainer. Commonwealth v. Fisher 451 Pa. 102, 106, 301 A.2d 605, 607 (1973)....Because the legislation is remedial in character, it is to be liberally construed in favor of the prisoner so as to effectuate its purpose. Commonwealth v. Merlo, supra at 522, 364 A.2d at 394."

Mayle, 780 A.2d at 682.

11. To permit the State of Delaware to extradite Petitioner over six years after they filed the request to have him transferred will violate the remedial purpose under the IAD act, and also; the due process and equal protection clause of the 14th Amendment of the U.S. Constitution.

This Honorable Court should not reward the utter lack of due diligence by the State of Delaware by permitting them to remove Petitioner after this passage of time and procedural

default, its failure to try him within a 120 days of the requests has denied the State of Delaware the right to try Petitioner.

Testimony before the Honorable William E. Carpenter on June 13, 2006 reflected that the State of Delaware did not proceed on its first Form 5 request for Temporary Custody in the year 2000 under the Interstate Agreement on Detainer Act but made a second request on February 8, 2005 and the request made before Judge Carpenter was the third requisition.

Nonetheless, the court erroneously signed an order transferring the Petitioner to Delaware on June 15, 2006. See: Exhibit "C", Order of Judge William E. Carpenter, attached.

The Petitioner filed a Notice of Appeal to the Superior Court on July 7, 2006, along with a "Petition for Stay From Extradition and for a Writ of Habeas Corpus". ~~Petitioner Brief was returned which was denied~~ on November 20th, 2006. See: Exhibit "D", Order for the Superior Court of Pennsylvania.

WHEREFORE, for all the foregoing reasons, it is respectfully requested that this Honorable ^{Court} grant this petition for a Writ of Habeas Corpus and dismiss Criminal Complaint and charges with prejudice; in the interest of judicial efficiency.

Respectfully submitted,

Blane Neely

Blane Neely, GE-0655
Petitioner Pro se
SCI Graterford P.O. BOX 244
Graterford, Pa. 19426-0244

DATED: January 3rd ²⁰⁰⁷ ~~2006~~

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLANE NEELY,
PETITIONER : CIVIL ACTION
VS. :
DAVID DIGUGLIELMO SUPT., et al : NO. _____
RESPONDENTS :

PROOF OF SERVICE

I, Blane Neely, hereby certify that on this date January
3rd, 2006, I have served the forgoing "MEMORANDUM OF LAW
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C.
at 2254" upon the following by FIRST CLASS MAIL TO:

(4 copies) N/A
(The Original)

Michael E. Kunz,
Clerk of the United States
District Court, Room 2609,
601 Market Street
Philadelphia, Pa. 19106

Blane Neely
Blane Neely, Pro Se
Inmate No. GE-0655
Petitioner Pro-se
P.O. Box 244
Grateford. PA 19426-0244

DATED: January 3rd, 2006 ²⁰⁰⁷

SUPERIOR COURT CRIMINAL DOCKET
(as of 12/10/2003)

Page 3

State of Delaware v. JAMES JONES
State's Atty: PAUL R WALLACE , Esq.
Defense Atty: RALPH D WILKINSON , Esq.

AKA: JIMMY JONES
JIMMY JONES

DOB: 02/02/1958

No.	Event Date	Event	Judge
18	03/08/2000	LETTER FROM TIMOTHY WILLARD, ESQ. TO SANDY AUTMAN EXPLAINING THAT DEF. HAS BEEN LOCATED AT GRATERFORD PRISON IN PENN. ON BEHALF OF CAPITAL BONDING, HE INTENDS TO FILE A MOTION TO BE RELIEVED AS BONDS-PERSON AND RELIEVED OF FINAL \$15,000 FORFEITURE PAYMENT. SHA	
19	03/22/2000	BAIL FORFEITED IN THE AMOUNT OF \$15,000.00 3RD INSTALLMENT.	
20	04/10/2000	MOTION TO SET ASIDE OR REMIT FORFEITURE OF BOND AND EXONERATE BOND LIABILITY FILED. TIMOTHY WILLARD, ESQ.	
21	05/01/2000	MOTION TO SETASIDE OR REMIT FIRFEITURE OF BOND & EXONERATE BOND LIABILITY GRANTED.	STOKES RICHARD F.
22	05/11/2000	MOTION TO SET ASIDE OR REMIT FORFEITURE OF BOND AND EXONERATE BOND LIABILITY FILED. TIMOTHY WILLIARD, ESQ.	
23	05/22/2000	MOTION TO SET ASIDE OR REMIT FORFEITURE OF BOND AND EXONERATE BOND LIABILITY DENIED.	QUILLEN WILLIAM T.
24	06/02/2000	AGREEMENT ON DETAINERS. FORM 5 FILED: REQUEST FOR TEMPORARY CUSTODY	

*** END OF DOCKET LISTING AS OF 12/10/2003 ***
PRINTED BY: CSCCHEI

EXHIBIT "A"

(1)

New Castle County
Superior Court I.D. No. 9908003361

AGREEMENT ON DETAINERS – FORM V
Request for Temporary Custody

TO: Records Specialist State Correctional Institution – Graterford

P.O. Box 246, Rt. 29, Graterford, PA 19426

Please be advised that **James Jones a.k.a. Brian Neeley/Blane Neeley; DOB 2/2/1958 & 2/2/1952**, who is presently an inmate of your institution, is under (indictment, information, or complaint) in the State of Delaware of which I am the Deputy Attorney General.

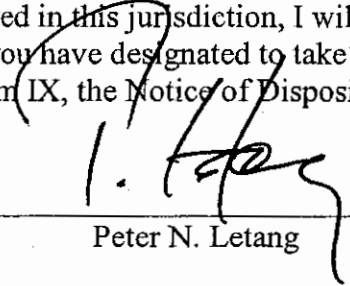
Said inmate is therein charged with the offense(s) enumerated below:

I.D. No. 9908003361 – Kidnapping Second Degree; 2 counts of Possession of a Deadly Weapon by a Person Prohibited; 4 counts of Possession of a Firearm During the Commission of a Felony; Robbery First Degree; Conspiracy Second Degree; Possession of a Weapon with a Removed, Obliterated, or Altered Serial Number; and Resisting Arrest.

I propose to bring this individual to trial on this (indictment, information or complaint) within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such individual pursuant to Article IV(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the inmate directly to you or allow any jurisdiction you have designated to take temporary custody. I also agree to complete the Form IX, the Notice of Disposition of a Detainer, immediately after trial.

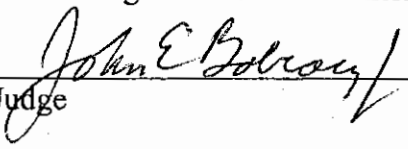
Signed: 

Peter N. Letang

Title: Chief Prosecutor

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a), the facts recited in this request for temporary custody are correct, and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

Dated: 2/28/05

Signed: 

Judge

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS
COUNTY OF MONTGOMERY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : CP-46-MD-0000575-2006
Ex Rel the State of Delaware
vs. :

Blane Neeley a/k/a James Jones :
SCI Graterford # GE0655 :

ORDER

AND NOW, this 15 day of June, 2006, the Court finds that the State of Delaware has fulfilled the requirements of the Interstate Agreement on Detainers Act (IADA), as codified by both Pennsylvania at P.A.C.S. §9101 et seq., and the State of Delaware at 11 Del. C., Chap. 25, §2540 et seq. The Court is satisfied that the accused named in the Request for Temporary Custody, Form 5, is the defendant/prisoner being held at the State Correctional Institution, Graterford.

IT IS HEREBY ORDERED AND DIRECTED that, pursuant to the provision of the Interstate Agreement on Detainers Act, the State of Delaware be given temporary custody of Blane Neeley a/k/a James Jones, to answer the criminal charges in that Jurisdiction.

IT IS FURTHER ORDERED that the Superintendent of the State Correctional Institution, Graterford shall proceed with arrangements for the transfer and temporary custody of the defendant to the demanding State of Delaware, County of New Castle, pursuant to the provisions of the Interstate Agreement on Detainers Act.

BY THE COURT:



William R. Carpenter, J.

cc: District Attorney (File) – ADA Karen Ricca, Esq.
Defendant Attorney – Jerome Brown Esq., 1628 JFK Blvd, Suite 1000, 8 Penn Center, Phila PA 19103
Defendant
Warden, SCI Graterford

EXHIBIT "C"

CLERK OF COURTS
OFFICE
MONTGOMERY COUNTY
PENNA.
2006 JUN 19 PM 3:16



The Superior Court of Pennsylvania
Office of the Prothonotary

530 WALNUT STREET
THIRD FLOOR, SUITE 315
PHILADELPHIA, PENNSYLVANIA 19106

KAREN REID BRAMBLETT, ESQUIRE
PROTHONOTARY

CHARLES E. O'CONNOR, JR., ESQUIRE
DEPUTY PROTHONOTARY

(215) 560-5800

WEBSITE: www.superior.pacourts.us

November 20, 2006

Blane Neely a/k/a James Jones, #416474
Howard R. Young Correctional Inst.
1301 East 12th Street
Wilmington, DE 19809

Re: Commonwealth of Pennsylvania v. Ex Rel. Blane Neely,
a/k/a James Jones v. David Digugliemo, etc.
Appeal of: Blane Neely
No. 1975 EDA 2006

Dear Mr. Neely:

This is to advise that the attached **Order** has been entered in the above-captioned matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "KRB", written over a horizontal line.

Karen Reid Bramblett
Prothonotary

KRB:pf

Attachment:

Cc: Bruce L. Castor, Jr., Esquire
Joseph J. Hylan, Esquire

EXHIBIT "D"

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
EX REL. BLANE NEELY, A/K/A : PENNSYLVANIA
JAMES JONES :

v. :

DAVID DIGUGLIEMO, :
SUPERINTENDENT, SCI-GRATERDORD, :
PENNSYLVANIA :

APPEAL OF: BLANE NEELY :

No. 1975 EDA 2006
(C.P. Montgomery County
No. 46-MD-0000575-06)

Filed: NOV 20 2006

ORDER

The Appellant's *pro se* "Motion for Appointment of Counsel from Different Venue By Leave of the Court" is denied. The *pro se* briefs filed by the Appellant on October 10, 2006 are hereby stricken, and the Court Crier shall return those briefs to the Appellant since the trial court has appointed the Public Defender of Montgomery County to represent the Appellant in connection with this appeal.

PER CURIAM

EXHIBIT "D"

COMMONWEALTH OF PENNSYLVANIA :
EX REL. BLANE NEELY, A/K/A :
JAMES JONES :

v. :

DAVID DIGUGLIEMO, :
SUPERINTENDENT, SCI-GRATERDORD, :
PENNSYLVANIA :

APPEAL OF: BLANE NEELY :

IN THE SUPERIOR COURT OF
PENNSYLVANIA

COPY

No. 1975 EDA 2006
(C.P. Montgomery County
No. 46-MD-0000575-06)

Filed: OCT 16 2006

ORDER

Upon consideration of the Appellant's *pro se* "Motion to File Handwritten Brief or Alternatively Appointment of Counsel to File Brief by Leave of Court," the trial court is directed to determine the Appellant's eligibility for court-appointed counsel within thirty days of the date that this Order is filed. If the Appellant is found to be eligible, then the trial court shall appoint counsel for the Appellant in connection with this appeal. The trial court shall immediately notify the Prothonotary of this Court of the appointment of counsel or of its determination of ineligibility. The Commonwealth's briefing schedule is vacated. A new briefing schedule will be established after this Court is notified of the trial court's determination. The Prothonotary is directed to provide the trial court with a copy of the Appellant's motion for reference purposes.

PER CURIAM

EXHIBIT "D"

P31
IN THE SUPERIOR COURT OF PENNSYLVANIA

1975 EDA 2006

07 -0103

COMMONWEALTH OF PENNSYLVANIA
EX REL. BLANE NEELY,
APPELLANT

V.

DAVID DIGUGLIELMO SUPERINTENDENT
S.C.I. GRATERFORD, PENNSYLVANIA, et al.,
APPELLEE

BRIEF FOR APPELLANT

APPEAL FROM THE FINAL ORDER ENTERED ON JUNE 15, 2006 DENYING
PETITION FOR A STAY FROM EXTRADITION UPON WRIT OF HABEAS CORPUS
BY THE HONORABLE WILLIAM R. CARPENTER JUDGE OF THE COURT OF COMMON
PLEAS OF MONTGOMERY COUNTY AT NO. 46-MD-0000575-2006

BLANE NEELY
a/k/a

JAMES JONES SBI # 416474
HOWARD R. YOUNG CORRECTIONAL INST.
1301 EAST 12TH STREET
WILMINGTON DELAWARE 19809

DATE FILED: 10/10/06 SESSION: _____

JOURNAL NUMBER: _____ PANEL: _____

CORRECTIONS: _____

8 _____

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Interstate Agreement on Detainer Act	

STATEMENT OF JURISDICTION

This Court has Jurisdiction over this Appeal pursuant to:
(A) 42 Pa. C.S.A. § 742 (exclusive appellate jurisdiction in the Superior Court of Pennsylvania from final order of the Court of Common Pleas); (B) Pennsylvania Rules of Appellate Procedure 341(a) (appeals as of right from final orders of a lower court).

ORDER IN QUESTION

The order which is subject of this appeal is the Final Order Dismissing Petition For A STAY From EXTRADITION Entered On June 15, 2006 By The Honorable William R. Carpenter Judge Of The Court of Common Pleas of Montgomery County At No. 46-MD-0000575-2006. See: Exhibit "B" attached to Brief.

STATEMENT OF QUESTION INVOLVED

I. Whether the Delaware State Officials violated the Terms Of the Interstate Agreement On Detainers Act, Article IV and V(c), by Twice filing "form V" Written Request for Temporary Custody and failing to Proceed or Accept Temporary Custody.

II. Whether the Delaware State Officials Third Requisition Papers in the Proper Order to allow Appellants transfer to the State of Delaware by Pennsylvania ~~At~~ Authorities.

SCOPE AND STANDARD OF REVIEW

When reviewing a lower court's decision, the standard of review is whether the determination was supported by the record and is free of legal error.

STATEMENT OF THE CASE

The State of Delaware sought to remove Appellant pursuant to the Interstate Agreement on Detainers Act in the matter of the State of Delaware v. James Jones Del. Super. Ct., I.D.# 9908003361 which involves an incident that occurred on or about August 4, 1999 in the City of Wilmington New Castle County Delaware.

Subsequent to Appellant being release on bond for the said incident, Appellant was arrested for, Appellant was incarcerated at Graterford's State Correctional Institution in Graterford Pennsylvania.

As a result of the State of Delaware being notified that Appellant was incarcerated in Pennsylvania at SCI Graterford, the State of Delaware filed its "First" Form V Written Request for Temporary Custody on June 2, 2000. (See: Exhibit "A" Attach to Brief, Superior Court of State of Delaware, Docket Entries #18 and 24.)

Testimony before the Honorable William E. Carpenter on June 13, 2006 at the Cuyler v. Adams Extradition Hearing in the Court of Common Pleas of Montgomery^{County}, reflected that the State of Delaware did not proceed nor accept temporary custody on its "First" Form V Written Request for Temporary Custody under the Interstate Agreement on Detainer Act but made a "Second" Form V Written Request for Temporary Custody on February 8, 2005 which was signed by a Judge and Deputy Attorney General in Delaware, However, that "Second Request" was not mailed to the District Attorney Office in Pennsylvania until October 26, 2005 over eight months later, Nonetheless the Court signed an Order transferring the Appellant to Delaware on June 15, 2006. (See: Exhibit "B", Second Request for Temporary Custody; Exhibit "C" Transcripts of Extradition Hearing of June 13, 2006 Pages 1-11 and also; Exhibit "D", Transfer Order attached to this Brief.)

Furthermore, the Third Requisition made by the State of Delaware was Defective, the Form V Written Request for Custody presented in 2006 was not only invalid because it was signed in February 8, 2005 but the Prosecutor Peter N. Letang had resigned as Chief Prosecutor for the State of Delaware and could not have lawfully made the Agreement to take Temporary Custody under the Interstate Agreement on Detainers Act.

SUMMARY OF THE ARGUMENT

The Appellant who is presently housed at the Howard R. Young Correctional Institution in the City of Wilmington New Castle County Delaware was unlawfully removed by Delaware State Authorities from Graterford State Correctional Institution at Graterford Pennsylvania via a Cuyler v. Adams Extradition Hearing pursuant to Interstate Agreement on Detainers Act.

The State of Delaware presented defective Requisition Papers at the Extradition's Hearing that were not in the Proper Order on their face and the State of Delaware was Knowingly in violation of the Terms of the Interstate Agreement on Detainers Act Article IV and V(c).

Futhermore, the State of Delaware violated State and Federal Laws and also; the Jurisdiction of the Superior Court of Pennsylvania by Transferring Appellant to another Jurisdiction across State Lines while instant Appeal of Transfer Order of lower court was still Pending before the Superior Court of Pennsylvania to prevent Disclosure of unlawful Extradition.

ARGUMENT

I. THE DELAWARE STATE OFFICIALS VIOLATED THE TERMS OF THE INTERSTATE AGREEMENT ON DETAINERS ACT ARTICLE IV AND V(C) BY TWICE FILING FORM V WRITTEN REQUEST FOR TEMPORARY CUSTODY AND FAILING TO PROCEED OR ACCEPT TEMPORARY CUSTODY

The Docket Entries from the State of Delaware Superior Court Criminal Docket reflect that subsequent to release on bond the Appellant was located incarcerated at Graterford Prison on March 8 2000. See: Exhibit "A", attached, Docket Entry # 18.

As a result of being notified that Appellant was now incarcerated at SCI-Graterford the State of Delaware filed its first "Form V" Written Request for Temporary Custody on June 2, 2000. See: Exhibit "A", attached Docket Entry # 24.

After failing to proceed on "first" Form V Written Request for Temporary Custody, the State of Delaware filed a "Second" Form V Written Request for Temporary Custody on February 8, 2005 which was signed by a Judge And Deputy Attorney General, However, that "Second" Request was not mailed to the District Attorneys Office in Pennsylvania ~~until~~ October 26, 2005 over eight months later.

Approximately Sixteen months after the State of Delaware filed its "Second" form V Written Request for Temporary Custody which Delaware again failed to proceed on; to commence extradition proceedings; accept temporary custody, to transport and Try Appellant, ^{Delaware} presented the defective "Second" Form V Written Request at the Appellants Cuyler v. Adams Extradition Hearing on June 13, 2006 as Delaware's "Third" Requisition Papers, not only was Requisition Paper not in the Proper Order ~~untimeliness~~ because of their Untimeliness but that the Deputy Attorney General Peter N. Letang who signed the February 8, 2005 ~~to~~ Form V Written Request for Validation had resigned when it was presented to Pennsylvania Court on June 13 2006.

The State of Delaware has unequivocally violated the Interstate Agreement on Detainers "Terms" Article IV and V(c), where State of Delaware failed to "Twice" commence extradition

Twice

proceedings and failed to accept temporary custody after filing "Form V" initiating transfer... the 120 day period of Article IV is triggered... Upon presentation of a written request for temporary custody or availability. See: Commonwealth v. Davis 567 Pa. 135 138-39, 786 A.2d 173 175 (2001), The Court concluded that "Article IV of the IAD provides the procedure by which the prosecutor in the requesting State initiates the transfer:

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of state in which the prisoner is incarcerated.

Pursuant to the Interstate Agreement on Detainer Act, Article V(c) "If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof the appropriate Court of jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect."

In Commonwealth v. Mayle, 788 A.2d 677 (Pa. Super. 2001), the court cited the following language from Commonwealth v. Thornhill 441 Pa. Super 382, 601 A.2d 842, 846 (Pa. Super. 1992) to set forth the policies under the act:

"The policies of the Interstate Agreement on Detainers is to encourage the expeditious and orderly disposition of charges and its

purpose is to promote and foster prisoner treatment and rehabilitation programs by eliminating uncertainties which accompany the filing of detainer. Commonwealth v. Fisher,

451 Pa. 102 106 301 A.2d 605 607 (1973).....

Because the legislation is remedial in character, it is to be liberally construed in favor of the prisoner so as to effectuate its purpose.

Commonwealth v. Merlo supra at 522 364 A.2d at 394."

Mayle, 780 A.2d at 682.

The State of Delaware waited over Six years after filing their "First" request to have Appellant extradited on June 2, 2000 before unlawfully transporting Appellant to Delaware on August 15, 2006, among numerous other violations of the terms under the Interstate ~~on Detainer~~ Agreement on Detainer Act, Delaware violated the remedial purpose under the Act.

II. THE DELAWARE STATE OFFICIALS THIRD REQUISITION PAPERS WAS NOT IN THE PROPER ORDER TO ALLOW APPELLANTS TRANSFER TO THE STATE OF DELAWARE BY PENNSYLVANIA AUTHORITIES

Pursuant to Cuyler v. Adams 101 S.Ct. 703, 709, at F.N. 11 (1981), citing Michigan v. Doran, supra, at 289 99 S.Ct., at 535:

"The person being extradited has no right to challenge the facts surrounding the underlying crime or the lodging of the custody request at the first hearing. Even at the later habeas corpus hearing, if any, he is permitted to question only:

(a) whether the extradition documents on their face are in order; (b) whether he has been charged with a crime in the demanding state; (c) whether he is the person named in the request for extradition; and (d) whether he is a fugitive."

At Appellants Extradition Hearings on June 5, 2006 before Judge Thomas Del Ricci and June 13, 2006 before Judge William R. Carpenter, in the Court of Common Pleas of Montgomery County Courtroom 6, Delaware presented Requisition Papers that was not in the Proper Order on their face, they were untimely and invalid due to the fact Delaware presented their February 8, 2005 "Second" Form V Written Request for Temporary Custody which had been violated for failure to execute requisition timely under Detainer Act, as Delaware's "Third" Requisition Papers.

Furthermore, the Requisition made by the State of Delaware to the Pennsylvania Authorities in June 2006 was invalid because the Interstate Compact Agreement to Try and return Appellant in a 120 days was signed by Peter N. Letang who had resigned as Deputy Attorney General.

The Honorable^{able} Court has Jurisdiction in light of the Interstate Compact Agreement to mandate the State of Delaware to comply with the "Terms" of the Interstate Agreement on Detainer Act pursuant to Article IV and V(c), Dismissing all Charges and return Appellant to Pennsylvania's Department of Corrections.

CONCLUSION

Because of The State Of Delaware violations of the Terms of the Interstate Agreement on Detainer's and the Jurisdiction of the Superior Court of Pennsylvania over the instant matter the Appellant ask this Honorable Court, in the interest of Due Process and Equal Protection of the Law Clause of the Fourteenth Amendment of the United States Constitution, mandate that the State of Delaware return Appellant to the Pennsylvania Department of Corrections for the sake of comity and the Interstate Compact between the State of Delaware and Pennsylvania, Dismissing all charges.

Date: October 3rd 2006

Respectfully submitted,

Blane Neely

Blane Neely
a/k/a

James Jones SBI# 416474
Howard R. Young Correctional Inst.
1301 East 12th Street
Wilmington Delaware 19809

PROOF OF SERVICE

I hereby certify that I am on this day serving the "Appellant's Original Brief" by first class mail upon the Prothonotary of the Superior Court of Pennsylvania to inturn serve a copy of above-said Brief upon the following:

Mary Killinger
Deputy District Attorney
Montgomery County Courthouse
Swede & Airy Streets
Norristown, PA 19401

EXECUTED ON October 3rd 2006, at Howard R. Young
Correctional Institution, City of Wilmington, New Castle
County, Delaware.

Respectfully submitted,
Blane Neely
Blane Neely
a/k/a

James Jones SBI# 416474
Howard R. Young Correctional Inst.
1301 East 12th Street
Wilmington DE 19809

SUPERIOR COURT CRIMINAL DOCKET
(as of 12/10/2003)

Page 3

State of Delaware v. JAMES JONES
 State's Atty: PAUL R WALLACE , Esq.
 Defense Atty: RALPH D WILKINSON , Esq.

AKA: JIMMY JONES
 JIMMY JONES

DOB: 02/02/1958

No.	Event Date	Event	Judge
18	03/08/2000	LETTER FROM TIMOTHY WILLARD, ESQ. TO SANDY AUTMAN EXPLAINING THAT DEF. HAS BEEN LOCATED AT GRATERFORD PRISON IN PENN. ON BEHALF OF CAPITAL BONDING, HE INTENDS TO FILE A MOTION TO BE RELIEVED AS BONDS-PERSON AND RELIEVED OF FINAL \$15,000 FORFEITURE PAYMENT.	SHA
19	03/22/2000	BAIL FORFEITED IN THE AMOUNT OF \$15,000.00 3RD INSTALLMENT.	
20	04/10/2000	MOTION TO SET ASIDE OR REMIT FORFEITURE OF BOND AND EXONERATE BOND LIABILITY FILED. TIMOTHY WILLARD, ESQ.	
21	05/01/2000	MOTION TO SETASIDE OR REMIT FIRFEITURE OF BOND & EXONERATE BOND LIABILITY GRANTED.	STOKES RICHARD F.
22	05/11/2000	MOTION TO SET ASIDE OR REMIT FORFEITURE OF BOND AND EXONERATE BOND LIABILITY FILED. TIMOTHY WILLIARD, ESQ.	
23	05/22/2000	MOTION TO SET ASIDE OR REMIT FORFEITURE OF BOND AND EXONERATE BOND LIABILITY DENIED.	QUILLEN WILLIAM T.
24	06/02/2000	AGREEMENT ON DETAINERS. FORM 5 FILED: REQUEST FOR TEMPORARY CUSTODY	

*** END OF DOCKET LISTING AS OF 12/10/2003 ***
 PRINTED BY: CSCCHEI

EXHIBIT "A"

1

New Castle County
Superior Court I.D. No. 9908003361

AGREEMENT ON DETAINERS – FORM V
Request for Temporary Custody

TO: Records Specialist State Correctional Institution – Graterford

P.O. Box 246, Rt. 29, Graterford, PA 19426

Please be advised that **James Jones a.k.a. Brian Neeley/Blane Neeley; DOB 2/2/1958 & 2/2/1952**, who is presently an inmate of your institution, is under (indictment, information, or complaint) in the State of Delaware of which I am the Deputy Attorney General.

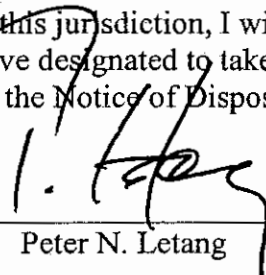
Said inmate is therein charged with the offense(s) enumerated below:

I.D. No. 9908003361 – Kidnapping Second Degree; 2 counts of Possession of a Deadly Weapon by a Person Prohibited; 4 counts of Possession of a Firearm During the Commission of a Felony; Robbery First Degree; Conspiracy Second Degree; Possession of a Weapon with a Removed, Obliterated, or Altered Serial Number; and Resisting Arrest.

I propose to bring this individual to trial on this (indictment, information or complaint) within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such individual pursuant to Article IV(a) of the Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction, I will return the inmate directly to you or allow any jurisdiction you have designated to take temporary custody. I also agree to complete the Form IX, the Notice of Disposition of a Detainer, immediately after trial.

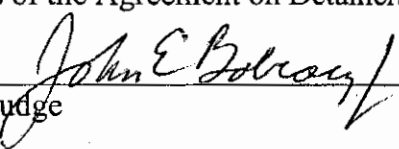
Signed: 

Peter N. Letang

Title: Chief Prosecutor

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV(a), the facts recited in this request for temporary custody are correct, and that having duly recorded said request I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers.

Dated: 2/28/05

Signed: 

Judge

EXHIBIT "B"

IN THE COURT OF COMMON PLEAS IN AND FOR
THE COUNTY OF MONTGOMERY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : NO. MD-0575-06
:
:
vs. :
:
BLANE NEELY :
a/k/a JAMES JONES :

CUYLER HEARING

Courtroom 6
Tuesday, June 13, 2006
Commencing at 9:40 a.m.

Megan McCartin, R.P.R.
Official Court Reporter
Montgomery County Courthouse
Norristown, Pennsylvania

BEFORE: THE HONORABLE WILLIAM R. CARPENTER, JUDGE

COUNSEL APPEARED AS FOLLOWS:

KAREN RICCA, ESQUIRE
Assistant District Attorney
for the Commonwealth

JEROME BROWN, ESQUIRE
for the Defendant

COPY

EXHIBIT "C"

I N D E X

COMMONWEALTH'S EVIDENCE

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Det. George Mood	5	11		

- - -

E X H I B I T S

COMMONWEALTH

<u>Number</u>	<u>Marked</u>	<u>Rec'd</u>
C-1 Ten-pg. document w/envelope	10	10

- - -

EXHIBIT "E"

1 Commonwealth v. Blane Neely

2 (Proceedings were commenced with
3 the Court; Karen Ricca, Esquire; Jerome Brown,
4 Esquire; and the Defendant(s) being present.)

5 - - -

6 MS. RICCA: Good morning, Your
7 Honor. This is the case of Commonwealth versus Blane
8 Neely, also known as James Jones, docket number
9 MD-575-06.

10 This is a hearing under Cuyler
11 versus Adams regarding the Interstate Agreement on
12 Detainers. The defendant is currently a prisoner at
13 our State Correctional Institute at Graterford. He is
14 represented by Mr. Jerome Brown of Philadelphia. He
15 has filed certain motions, Your Honor, contesting the
16 transfer, which is the reason for this hearing.

17 The last time we were in court
18 Mr. Brown did stipulate to the fingerprint report that
19 I had from Detective Bruce Saville.

20 MR. BROWN: That is correct,
21 Your Honor.

22 THE COURT: So identity isn't
23 the issue, right?

24 MR. BROWN: Identity is not the
25 issue in this case.

EXHIBIT "C"

1 Commonwealth v. Blane Neely

2 THE COURT: What is the issue?

3 MR. BROWN: The issue in this
4 case is a couple-fold. Has the Court had an
5 opportunity to read the Motion for Habeas Corpus?

6 THE COURT: It's before me right
7 now.

8 MR. BROWN: Your Honor, number
9 one, the State of Delaware lodged a detainer against
10 Mr. Neely probably about six years ago when he was
11 housed at SCI Graterford. Thereafter, the State of
12 Delaware has taken no action in this case.

13 I guess our attack is a
14 couple-fold. Number one, the fact that remedial
15 purposes of the Act are that individuals are to be
16 taken, under the Act, quickly, because of the fact
17 that they have certain rehabilitative efforts ongoing,
18 which Mr. Neely has done. He has actually served one
19 sentence --

20 THE COURT: Let me stop you for
21 a minute. You are really saying it's not a timely
22 request from Delaware any longer.

23 MR. BROWN: That's number one.

24 THE COURT: All right. Well
25 what's number two?

EXHIBIT "C"

1 Det. George Mood - Direct

2 MR. BROWN: Number two is,
3 whatever requisition papers that there were that
4 existed six years ago are no longer valid.

5 THE COURT: And is there a
6 number three?

7 MR. BROWN: I think that would
8 probably -- and essentially, because of the
9 timeliness, they violated the remedial purposes of the
10 Act.

11 THE COURT: Very well.

12 Is the Commonwealth ready to
13 respond with testimony or other evidence?

14 MS. RICCA: Yes, Your Honor. We
15 have one witness, Your Honor.

16 Commonwealth would call
17 Detective George Mood to the stand, please.

18 - - -

19 DETECTIVE GEORGE MOOD, having
20 been duly sworn, was examined and testified as
21 follows:

22 DIRECT-EXAMINATION

23 - - -

24 BY MS. RICCA:

25 Q. Detective Mood, by whom are you employed?

EXHIBIT "E"

1 Det. George Mood - Direct

2 A. By the Montgomery County District Attorney. I am
3 assigned to the Detective Bureau as a Fugitive Unit
4 investigator, have been so employed since September of
5 2002.

6 Q. Do your duties include handling documents
7 regarding the Interstate Agreement on Detainers?

8 A. Yes, involving that, and also under Uniform
9 Criminal Extradition Act.

10 MR. BROWN: Your Honor, may we
11 have one moment to look at these.

12 THE COURT: All right, we'll
13 take a brief recess. Let me know when you're ready.

14 (A recess is taken.)

15 - - -

16 MR. BROWN: Your Honor, if I
17 might, I would like to add one other ground after
18 speaking with Mr. Neely. It is his position that the
19 Commonwealth -- not the Commonwealth, but the State of
20 Delaware must also, under Cuyler versus Sullivan --
21 excuse me -- Cuyler versus Adams, grant all of the
22 protections under the Uniform Criminal Extradition Act
23 also, and they have not done that, in particular
24 filing a governor's warrant here. That is the
25 additional ground he has asked me to raise.

EXHIBIT "E"

1 Det. George Mood - Direct

2 THE COURT: All right. Proceed.

3 MR. BROWN: Your Honor, we have
4 already seen the exhibit that the Commonwealth is
5 showing.

6 THE COURT: Thank you.

7 MS. RICCA: Your Honor, there is
8 a copy on the bench, if you care to follow along.

9 BY MS. RICCA:

10 Q. Detective, I am showing you a document that is
11 paper clipped and has a "1" in the upper corner.

12 Could you please identify that for the record.

13 A. Yes. Your Honor, this is a Form V under the
14 Agreement on Detainers Act, Request for Temporary
15 Custody, filed by the State of Delaware to the
16 attention of the State Correctional Institution at
17 Graterford.

18 It says "James Jones, a/k/a
19 Brian Neely/Blane Neely," and dates of birth are
20 listed, in which the State of Delaware requests
21 temporary custody for disposition of open, untried
22 charges. That's on the first page.

23 The second page is a capias from
24 the State of Delaware, and that is a certified copy.

25 The following pages are bills of

EXHIBIT "E"

1 Det. George Mood - Direct

2 indictment against Mr. Neely. The information I have
3 are all certified copies.

4 The last page is a certified
5 copy of the fingerprints for a Jones, James that was
6 submitted along with that.

7 These documents were received by
8 me on October 5, 2006. I time-stamped the envelope in
9 which I received these documents.

10 Q. Detective, are these documents in the same
11 condition as when you received them on the date that
12 you opened that envelope and time-stamped it?

13 A. Yes, they are.

14 THE COURT: What date did you
15 receive the documents?

16 THE WITNESS: October 26, 2005.

17 BY MS. RICCA:

18 Q. Now, detective, after finding out that the
19 defendant wished a contested hearing, what did you do
20 with the last page attached to those certified
21 documents?

22 A. I submitted that certified copy of a ten-print
23 card to Detective Lieutenant Bruce Saville of the
24 Montgomery County Detective Bureau, along with a known
25 copy of a ten-print card for Blane Neely, who was

EXHIBIT "E"

1 Det. George Mood - Direct

2 incarcerated at State Correctional Institution at
3 Graterford.

4 THE COURT: All right, just stop
5 a minute.

6 Mr. Brown, if your client
7 disrupts the proceedings further, I'll terminate. All
8 right?

9 MR. BROWN: Yes, Your Honor, I
10 understand.

11 THE COURT: Continue.

12 BY MS. RICCA:

13 Q. Did you receive a report back from the Detective
14 Bureau?

15 A. Yes, I did.

16 MS. RICCA: Your Honor, I
17 believe that is the basis for the identification
18 stipulation. There is a document purported to be an
19 expert report --

20 THE COURT: He has stipulated
21 that identification is not the issue.

22 MS. RICCA: Yes, Your Honor.
23 I'm moving that into evidence, please.

24 MR. BROWN: I have no objection,
25 Your Honor.

EXHIBIT "E"

1 Det. George Mood - Direct

2 THE COURT: Admitted.

3 (The aforementioned documents,
4 consisting of ten pages and attached envelope, marked
5 Commonwealth Exhibit C-1 for identification and
6 admitted into evidence.)

7 BY MS. RICCA:

8 Q. Now, detective, as you look through those
9 documents, they bear certain seals; is that correct?

10 A. Yes, they do, except for page one, which is what
11 I was told is the original copy of the Form V, which I
12 received from the State of Delaware. The Capias, the
13 Bills of Information or bills of indictment, which are
14 stapled together and stapled to the fingerprint card.

15 Q. And they are certified; is that correct?

16 A. Yes, they are.

17 MS. RICCA: Your Honor, I have
18 no further questions for him and I would move
19 Commonwealth Exhibit 1 into evidence.

20 MR. BROWN: No objection, Your
21 Honor.

22 THE COURT: You may
23 cross-examine.

24 CROSS-EXAMINATION

25

- - -

1 Det. George Mood - Cross

2 BY MR. BROWN:

3 Q. Sir, have you had any contact with the State of
4 Delaware regarding these documents, other than
5 receiving them in the mail?

6 A. Yes, I did.

7 Q. Are you aware that they filed a Form V request in
8 their court back on June 2, 2000?

9 A. I'm aware that a Form V was filed with the
10 Pennsylvania Department of Corrections, and the
11 original document was not in the Delaware file;
12 therefore, a new original Form V was issued and signed
13 by the judge in New Castle County, New York, a John
14 E. --

15 THE COURT: Not New York, sir.

16 THE WITNESS: I'm sorry, New
17 Castle County, Delaware, and that was dated 2/8/05.

18 BY MR. BROWN:

19 Q. But as far as you know there was a document that
20 was filed in that court. Would you have any reason to
21 disagree with the assertion that it was filed back in
22 2000?

23 A. I do know that -- I was told that there was a
24 document filed earlier, to wit the date I am not
25 aware. But I was told there was a document filed

IN THE COURT OF COMMON PLEAS
COUNTY OF MONTGOMERY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : CP-46-MD-0000575-2006
Ex Rel the State of Delaware
VS. :

Blane Neeley a/k/a James Jones :
SCI Graterford # GE0655 :

ORDER

AND NOW, this 15 day of June, 2006, the Court finds that the State of Delaware has fulfilled the requirements of the Interstate Agreement on Detainers Act (IADA), as codified by both Pennsylvania at PA.C.S. §9101 et seq., and the State of Delaware at 11 Del. C., Chap. 25, §2540 et seq. The Court is satisfied that the accused named in the Request for Temporary Custody, Form 5, is the defendant/prisoner being held at the State Correctional Institution, Graterford.

IT IS HEREBY ORDERED AND DIRECTED that, pursuant to the provision of the Interstate Agreement on Detainers Act, the State of Delaware be given temporary custody of Blane Neeley a/k/a James Jones, to answer the criminal charges in that Jurisdiction.

IT IS FURTHER ORDERED that the Superintendent of the State Correctional Institution, Graterford shall proceed with arrangements for the transfer and temporary custody of the defendant to the demanding State of Delaware, County of New Castle, pursuant to the provisions of the Interstate Agreement on Detainers Act.

BY THE COURT:



William R. Carpenter, J.

cc: District Attorney (File) – ADA Karen Ricca, Esq.
Defendant Attorney – Jerome Brown Esq., 1628 JFK Blvd, Suite 1000, 8 Penn Center, Phila PA 19103
Defendant
Warden, SCI Graterford

EXHIBIT "D"

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